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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,913	07/31/2006	Nobuo Takeshita	1190-0632PUS1	2547
2292	7590	05/11/2009	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				AGUSTIN, PETER VINCENT
ART UNIT		PAPER NUMBER		
2627				
NOTIFICATION DATE			DELIVERY MODE	
05/11/2009			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/587,913	TAKESHITA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Peter Vincent Agustin	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 May 2009.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4-6,9,10 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) 14-22 is/are withdrawn from consideration.
- 5) Claim(s) 1,4-6,9 and 10 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 14-22 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant submits (see page 9 of Remarks filed on May 4, 2009) that claims 21 & 22 should be included in the examination of the present application. Applicant recognizes that elements of claims 21 & 22 are not specifically recited in the originally elected claims, but points out that these elements are not labeled as not being part of the originally elected claims. In addition, applicant points out the applicant's right to add features in order to overcome teachings of the prior art. While the examiner agrees that claims can be narrowed in order to overcome a rejection, the fact remains that claims 21 & 22 include subject matter which are independent and distinct from the originally elected claims. Had these claims been presented originally, the examiner would have restricted these claims from the other claims because under PCT Rule 13.2, the claims would lack the same or corresponding "special technical features", as noted in the previous Office action.

The requirement is still deemed proper and is therefore made FINAL.

### ***Allowable Subject Matter***

2. Claims 1, 4-6, 9 & 10 are allowed over the prior art of record.
3. The following is a statement of reasons for the indication of allowable subject matter:
  - (a) In regard to claims 1, 5, 6 & 10, the prior art of record alone or in combination fails to teach or suggest:

*"...the test recording areas in the odd-numbered recording layers and the test recording areas in the even-numbered recording layers do not overlap in the thickness direction of the optical disc, the test recording areas in the odd-numbered recording layers are mutually aligned in the thickness direction, and the test recording layers in the even-numbered recording layers are mutually aligned in the thickness direction, ...the test recording areas in the odd-numbered*

*recording layers are formed adjacent one of the innermost circumference and the outermost circumference of the optical disc, and the test recording areas in the even-numbered recording layers are formed adjacent another one of the innermost circumference and the outermost circumference of the optical disc".*

(b) In regard to claims 4 & 9, see the reasons noted in the Office action mailed

September 10, 2008.

***Conclusion***

4. This application is in condition for allowance except for the following formal matters:
  - (a) cancellation of claims 14-20 (non-elected without traverse in the reply filed on August 1, 2008).
  - (b) cancellation of claims 21 & 22 (as noted above).

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Vincent Agustin whose telephone number is (571) 272-7567. The examiner can normally be reached on Monday-Thursday 8:30 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, A. L. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter Vincent Agustin/  
Primary Examiner, Art Unit 2627